

Dec

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO.
)	87-3034
HALLIE C. ORMOND,)	
C.C. GRISHAM and)	
MARY F. BURKE,)	
)	
Defendants.)	

CONSENT DECREE

Plaintiff, United States of America, on behalf of the Administrator of the United States Environmental Protection Agency (EPA), has filed a Complaint herein on April 28, 1987, 1987, which was amended to include Mary F. Burke on June 3, 1987. The Complaint and Amended Complaint allege that the defendants Hallie C. Ormond, C.C. Grisham and Mary F. Burke (defendants), have failed to provide access to property owned by defendant Burke and formerly owned by defendant Ormond, to the authorized representative of EPA for the purposes of completing a work plan for a Remedial Investigation/Feasibility Study (RI/FS). The Complaints seek access to the Site pursuant to Sections 104(e) and 106 of the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. §§ 9604(e) and 9606 (as amended) (CERCLA). The parties to this suit have consented to the entry of this Decree without trial of any issue, law or fact, and the parties hereby stipulate to this Court that in order to resolve the issues this Consent Decree should be entered.

NOW, THEREFORE, it is hereby ORDERED, ADJUDGED and
DECREED as follows:

I. Jurisdiction

A. This Court has jurisdiction over the subject matter of this action and over the parties pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. §§ 1345 and 1355.

II. Background

A. Defendant Mary F. Burke (Burke), is the owner of the real property comprising the site where the Arkwood Wood Treating Facility was located. For the purposes of this Consent Decree "the Arkwood Site" or "the Site" shall mean and refer to the land described and depicted in Exhibit A attached hereto. Defendant Hallie C. Ormond (Ormond) was the former owner of the Arkwood Site and defendant C.C. Grisham (Grisham) and Arkwood, Inc., owned and operated a wood treating facility located on the Arkwood Site.

B. Arkwood, Inc., was a pentachlorophenol (PCP) and creosote wood treating company and its stockholders and officers included Ormond during part and Grisham during all of its existence. Arkwood Inc., operated the wood treating facility from approximately 1965 until 1973. In 1973, Mass Merchandisers, Inc. (MMI), leased the Site from Ormond, and acquired and operated the wood treating facility at the Arkwood Site until December 31, 1984. Sampling and studies at the Site indicate that during the operation of facility, the Site became contaminated with PCP,

creosote, and wood treating oils and/or the derivatives of PCP, creosote, and wood treating oils.

III. Binding Effect

This Decree shall apply to and be binding on the above named parties and upon their agents, trustees, servants, employees, successors, heirs and assigns. The undersigned representatives of the plaintiff and the defendants certify that they are fully authorized to enter into the terms and conditions of this Decree and to execute and legally bind the parties.

IV. Definitions

The terms as used in this Consent Decree, to the extent applicable, are defined in Section 101 of CERCLA, 42 U.S.C. § 9601.

V. Site Access

A. The defendants shall permit the EPA or any authorized representatives of the EPA, including any contractors, subcontractors and consultants, upon proper identification, to enter, inspect, and conduct activities at the Site for the purposes of completing the RI/FS work plan, conducting the RI/FS and thereafter for the purposes of implementing, operating, maintaining or overseeing any response action at the Site as may be required.

B. Nothing in this paragraph is intended to limit in any manner the right of entry or inspection that the United States and the State of Arkansas, their agencies or departments may otherwise have by operation of any law.

C. No conveyance of title, easement or other interest in the property comprising the Arkwood site shall be made without a provision allowing for the access to the Site by EPA or its authorized representative and its contractors and subcontractors to conduct any response activity at the Site as specified above. All such conveyances of title, grants of easements or other conveyances of any interest in the Arkwood site shall contain a covenant to allow for such response work, to grant EPA or its authorized representatives including its contractors and subcontractors access to perform such work and to grant EPA and the State or any authorized representative thereof access to oversee and monitor such work.

D. At least sixty days prior to any voluntary conveyance of title, easement or other interest in the property comprising the Arkwood Site, defendant Burke shall notify the EPA, Region VI, at the address listed in subparagraph F of this Paragraph, by registered mail of her intent to convey any interest in the property, and of the provisions made allowing for the continued access to and operation of facilities installed pursuant to the RI/FS or a subsequent remedial action plan. The restrictions and obligations set forth herein shall run with the land and shall be binding upon any and all parties who acquire any interest in the Arkwood site.

E. The defendants shall not perform any response action at the Site without the express written approval of the EPA, Region VI. In addition, the defendants and their successors

and assigns shall not use any portion of the Site in any manner that would adversely affect the implementation of the RI/FS or subsequent response action at the site by the EPA, its authorized representative, or its contractors and consultants.

F. Within ten days of the effective date of this Consent Decree, defendant Burke shall record in the appropriate Registry of Deeds a copy of this Consent Decree as notice to third parties of this agreement. A copy of said recording shall be sent to CERCLA Enforcement Branch Chief, Arkwood Site, Environmental Protection Agency, Region VI, 1445 Ross Ave., Dallas, Texas 75202.

VI. Relief from Liability

This Consent Decree shall not be construed in any manner to relieve the defendants of any liability under Section 106 and 107 of CERCLA, Section 7003 of RCRA or any other State or Federal statute or regulation for contamination of the Arkwood site. The United States specifically reserves the right to seek other remedies or sanctions available to it under CERCLA. The defendants shall not be responsible for completing the RI/FS for the Site so long as the RI/FS is fully completed by MMI pursuant to its Administrative Order on Consent, Docket No. VI-6-86.

VII. Retention of Jurisdiction

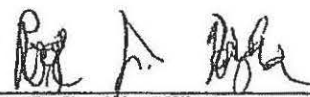
The Court shall retain jurisdiction over this Consent Decree to ensure compliance with the provisions set forth in Paragraph V., and to award penalties in the event of non-compliance with this Consent Decree, until such time as the EPA

determines that the site requires no further response action. The plaintiff agrees to waive all penalties against the defendants for the violations of CERCLA as alleged in its Complaint which occurred prior to the date of filing of this Consent Decree.


THE PARTIES HEREBY ENTER INTO THIS CONSENT DECREE AND SUBMIT IT TO THIS COURT.

This Consent Decree approved and entered on this 11th day of July, 1988.


UNITED STATES DISTRICT COURT JUDGE



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Land and Natural Resources Division
U.S. Department of Justice



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U. S. DISTRICT COURT
WESTERN DIST. ARKANSAS
FILED

JUL 12 1988

CHRIS R. JOHNSON, CLERK
By Nancy Watson
Deputy Clerk

This document entered on docket in
compliance with Rule 58 and 79 (a).
FRCP.

on 7-12-88 by N. Watson

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EXHIBIT "A"

Part of the Northeast Quarter of the Southwest Quarter and part of the South Half of the Northwest Quarter and part of the Northwest Quarter of the Southeast Quarter of Section 27, Township 21 North, Range 21 West, Boone County, Arkansas, more particularly described to-wit: Commencing at a stone marking the Southeast corner of the Northeast Quarter of the Southwest Quarter of Said Section 27, thence North 86° 02' 53" West 946.17 feet, thence North 01° 28' 49" East 970.62 feet to the place of beginning said point being located on northerly right-of-way of county road, thence with said northerly right-of-way North 31° 53' 10" West 492.77 feet, thence North 33° 15' 00" West 345.29 feet, thence North 29° 35' 17" West 345.49 feet, thence North 34° 06' 52" West 118.66 feet, thence North 39° 10' 31" West 92.00 feet, thence North 43° 16' 58" West 107.38 feet, thence leaving said northerly right-of-way North 42° 42' 38" East 2.83 feet to the southerly right-of-way of Missouri Pacific Railroad, thence with said southerly right-of-way South 47° 17' 22" East 49.77 feet, thence South 48° 16' 00" East 318.53 feet, thence South 48° 19' 25" East 602.13 feet, thence South 49° 01' 52" East 95.36 feet, thence South 50° 04' 43" East 99.37 feet, thence South 51° 43' 07" East 98.58 feet, thence South 53° 45' 52" East 100.98 feet, thence South 55° 55' 22" East 103.00 feet, thence South 57° 46' 36" East 12.20 feet, thence South 32° 13' 24" West 135.00 feet, thence South 57° 46' 36" East 245.44 feet, thence North 32° 13' 24" East 106.15 feet to the North line of a deed dated February 22, 1961, and recorded in Deed Book 85, Pages 164-165 in the Circuit Clerk and Ex-officio Recorder Office in and for Boone County, Arkansas, thence along said North line South 56° 29' 35" East 1004.34 feet, thence leaving said North line South 23° 30' 25" West 154.07 feet to the approximate toe of slope of hill side, thence with said approximate toe of slope South 48° 18' 45" West 47.44 feet, thence South 80° 10' 42" West 100.89 feet, thence North 76° 14' 40" West 132.91 feet, thence North 68° 01' 53" West 282.88 feet, thence North 52° 56' 23" West 164.49 feet, thence North 63° 51' 10" West 200.07 feet, thence South 29° 26' 53" West 116.89 feet, thence South 03° 41' 49" West 144.76 feet to the northerly right-of-way of County Road, thence leaving said approximate toe of slope and following said northerly right-of-way of County Road North 46° 17' 18" West 70.92 feet, thence North 41° 56' 22" West 86.18 feet, thence North 36° 55' 21" West 86.29 feet, thence North 33° 04' 49" West 111.09 feet, thence North 31° 53' 10" West 289.85 feet to the place of beginning and containing 18.076 acres more or less and subject to existing easements and right-of-ways.

